

Dated: February 26, 1998

CASE NO.: 97-ERA-37

IN THE MATTER OF:

Gary Nason
Complainant

v.

Maine Yankee Atomic Power Co.
Respondent

**RECOMMENDED DECISION AND ORDER
APPROVING SETTLEMENT AGREEMENT AND GENERAL RELEASE
AND DISMISSING COMPLAINT WITH PREJUDICE**

This is a proceeding arising under the Energy Reorganization Act, 42 U.S.C. §5851, and its implementing regulations found at 29 C.F.R. Part 24. The undersigned is in receipt of a Motion for Recommendation to Approve Settlement Agreement and Dismiss With Prejudice. Attached to that Joint Motion is a fully-executed Settlement Agreement and General Release.

The Part 24 regulations do not contain any provision relating to a dismissal of a complaint by voluntary settlement. Therefore, it is necessary to refer to the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, 29 C.F.R. Part 18, which Rules are controlling in the absence of a specific provision at Part 24.

Part 18.9 allows the parties in a proceeding before an administrative law judge to reach agreement on their own. 29 C.F.R. Part 18.9(a)-(c). The parties must “[n]otify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action.” 29 C.F.R. Part 18.9(c)(2). Once such notification occurs, the administrative law judge shall then issue a decision within thirty (30) days if satisfied with the agreement's form and substance. 29 C.F.R. Part 18.9(d).

This Judge must review the Settlement Agreement to determine whether its terms are a fair, adequate and reasonable settlement of the complaint. **Bonanno v. Stone & Webster Engineering Corp.**, 97-ERA-33 (6/27/97) (Citation Omitted). In the matter **sub judice**, I note that the terms of the settlement agreement encompass the settlement of matters arising under various laws, only one of which is the ERA. See Exhibit 1, Appendix A, para. 2. For the reasons set forth in **Poulos v. Ambassador Fuel Oil Co., Inc.**, 86-CAA-1 (Sec'y 11/2/87), I have limited my review of the agreement to determining whether its terms are a fair, adequate and reasonable settlement of Complainant's allegation that Respondent violated the ERA.

Upon careful review, this Judge has reached the determination that the Settlement Agreement and General Release fully comports with precedent established by the Secretary and/or Administrative Review Board.

The parties have included language in the agreement to the effect that Respondent believes it acted lawfully and that nothing in the agreement should be construed as an admission of liability or violation of the ERA. See Exhibit 1, preamble, para. 4. This recommended decision and order shall not be construed as indicating my view on the merits of this entire matter.

Paragraph 3.1 of the settlement provides that Complainant shall keep the terms of the settlement confidential. I note, however, the parties' effort to bring this confidentiality provision into compliance with applicable case law, such as **McGlynn v. Pulsair Inc.**, 93-CAA-2 (Sec'y 6/28/93), by specifically providing the confidentiality provision does not restrict disclosure where required by law. See Exhibit 1, paras. 3.1(c), 3.3, 4.1.

Paragraph 7.1 provides that the agreement shall be governed in all respects by the laws of the State of Maine. I interpret this provision as not limiting the authority of the Secretary and/or Administrative Review Board or the U.S. District Court under the applicable statute and regulations. See **Generally Rondinelli v. Consolidated Edison Co.**, 91-CAA-3 (Sec'y 4/10/92), at p. 2.

In accordance with **Biddy v. Pipeline Service Co.**, 95-TSC-7 (12/3/96), the parties have certified that no other settlement agreements were entered into between the parties. See Exhibit 1, para. 8.1.

This Judge notes the parties have requested that the Settlement Agreement and General Release be maintained as confidential commercial information, as defined at 29 C.F.R. Part 70.26, and thereby precluded from disclosure pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552. In this regard, see Exhibit 1, para. 3.4.

FOIA, however, *requires* agencies to disclose requested documents unless they are exempt from disclosure. See **Bonanno, supra**, at p. 2.; **Klock v. Tennessee Valley Auth.**, 95-ERA-20 (ARB 5/30/96), at p. 2; **Darr v. Precise Hard Chrome**, 95-CAA-6 (Sec'y 5/9/95), at p. 2; **Webb v. Consolidated Edison Co.**, 93-CAA-5 (Sec'y 11/3/93) at p. 2. Since no FOIA request has been made, "it would be premature to determine whether any of the exemptions in FOIA would be

applicable and whether the Department of Labor would exercise its authority to claim such an exemption and withhold the requested information. It would also be inappropriate to decide such questions in this proceeding.” **Darr, supra**, at pp. 2-3. **See Also DeBose v. Carolina Power and Light Co.**, 92-ERA-14 (Sec’y 2/7/94), at p. 3. The appropriate procedure for a FOIA request may be found at 29 C.F.R. Part 70.26. **See Generally Bonanno, supra**, at n. 1.

Accordingly, it is hereby **RECOMMENDED** that the Settlement Agreement and General Release between Complainant Nason and Respondent Maine Yankee Atomic Power Company be **APPROVED** and that the matter be **DISMISSED WITH PREJUDICE**. It is **FURTHER RECOMMENDED** that the Settlement Agreement and General Release be designated as confidential commercial information and be handled in accordance with 29 C.F.R. Part 70.26.

DAVID W. DI NARDI
Administrative Law Judge

Boston, Massachusetts
DWD:jw

NOTICE: This Recommended Decision and Order and the administrative file in this matter will be forwarded for review to the Administrative Review Board, U.S. Department of Labor, Frances Perkins Building, Room S-4309, 200 Constitution Avenue, N.W., Washington D.C. 20210. The Administrative Review Board is the authority vested with the responsibility of rendering a final decision in this matter in accordance with 29 C.F.R. Part 24.6, pursuant to Secretary's Order 2-96, 61 Federal Register 19978 (May 3, 1996).

